

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
Plaintiff,

v.

SHANE C. BUCZEK
Defendant,

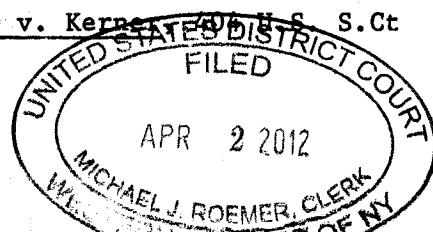
) Docket No.
) 1:09CR 00121-001 ✓
)
) MOTION FOR RETURN
) OF SEIZED PROPERTY
) PURSUANT TO RULE 41(g)

* * * * *

COMES NOW, the Defendant, Shane C. Buczak, appearing Pro Se, and files this MOTION and respectfully requests from this Court, that since I am unlearned at law, that I not be held to the strict standards as an attorney would be, and that I be given the leeway mandated by Haines v. Kerne, ~~506 U.S. S.Ct~~
519, 520 (1972).

STATEMENTS OF FACT

- 1) On April 21, 2009, the Defendant was charged in a two count indictment.
- 2) Within said indictment there was NOT and reference of forfeiture allegations at any time, nor was reference made at sentencing.
- 3) Pursuant to Federal Rules of Criminal Procedure (FRCrP) 32.2 (a) "forfeiture allegations must be contained in indictment information."
- 4) On or about January 16, 2009, the prosecution, through it's affiliate the FBI, seized from the address of 7335 Derby Rd, Derby, New York, all of the specific items listed in EXHIBIT A.
- 5) Pursuant to FRCrP 32.4 (b) "A court must NOT enter a judgement of forfeiture in a criminal proceeding unless the indictment or information contains NOTICE to the Defendant the the government will seek the forfeiture of property an part of any sentence."
- 6) Pursuant to FRCrP 32.2 (a) "a court must NOT enter a judgement of forfeiture in a criminal proceeding unless the indictment of information contains



notice to the Defendant that the government will seek the forfeiture of the property as part of any sentence."

- 7) The Petitioner NEVER received "forfeiture allegations" as specified and required pursuant to FRCrP 32.2(a).
- 8) The Defendant NEVER received NOTICE of the government seeking property forfeiture as specified and required pursuant to FRCrP 32.4(b).
- 9) The Defendant NEVER received NOTICE or judgment from this court pertaining to requirements for a judgement of forfeiture in a criminal proceeding pursuant to FRCrP 32.2(a).
- 10) The prosecutor did knowingly and willfully violate the requirements of FRCrP 32.2(a) by refusing to include "forfeiture allegations" in the Indictment, and failing to include them at sentencing.
- 11) The prosecution did knowingly and willfully violate the requirements of FRCrP 32.4(b) by refusing to provide NOTICE that it was seeking property forfeiture against the Defendant.

Based upon the foregoing, and the government's knowing and willful refusal to comply with this court's established Federal Rules of Criminal Procedure the Defendant asks this honorable court to return all of the improperly seized property specifically listed in EXHIBIT "A" attached hereto, to its rightful owner, the Defendant, pursuant to FRCrP 41(g) based upon the facts that:

- 1) The Defendant is the rightful owner of the seized property;
- 2) The property is not contraband;
- 3) The seizure of the property was improper and illegal pursuant to the government's knowing and willful refusal to comply with the law by disobeying the strict guidelines pertaining to forfeiture and seizures in FRCrP 32.2(a) and 32.4(b).

Respectfully submitted this 29 day of MARCH, 2012

"Without Recourse"

By: Shane-Christopher:Buczek
Shane-Christopher:Buczek,
Solvent, Real Party Interest
All Rights Reserved UCC 1-308
Authorize Representative

c/o 7335 Derby Road
Derby, New York [14047]
Non Domestic Without the U.S.

CERTIFICATE OF SERVICE

On this 29th day of March 2012, a true and correct copy of Motion for Return of Seized property pursuant to Rule 41(g) was mailed to Jean Marie McCarthy - Deputy Clerk WDNY 2 Niagra SQ Buffalo, NY 14202 by U.S. mail, and the Clerk will serve the United States Attorney's Office in Buffalo, New York by electronic filing which is Court Order: Anthony Bruce U.S. Attorney's Office WDNY 138 Delaware Avenue Buffalo, New York [near 14202] united states of America.

By: *Shane Christopher*
:Buczek

Date *3-29-2012*

Exhibit "A"

Shane's

Property

PRIVATE PROPERTY

EVIDENCE RECOVERY LOG

PRINT LEGIBLY

PAGE 1 OF 2

GENERAL INFORMATION		PERSONNEL (Include Initials)	
DATE	01/16/2009		
CASE ID	2664-BF-39552		
LOCATION	7335 Derby Rd, Derby, NY		
PREPARER/ASSISTANTS	JRS		
	JAD		

ITEM #	DESCRIPTION	WHERE FOUND	RECOVERED BY / OBSERVED BY (Last name)	PACKAGING METHOD	COMMENTS (if needed)
			US Marshal		
001	52" LCD TV Samsung	Family Room	HCF	box	US Marshal
002	Universal TV stand	Family Room	JS	as is	US Marshal
003	5.1 Channel Home Theater System Yamaha	Family Room TV stand	HCF	box	US Marshal
004	Blu Ray DVD Player	Family Room TV stand	JS	box	US Marshal
005	Computer Cart and File Cabinet	Office #2	HCF	box	US Marshal
006	Front load steam washer	Laundry Room	JS	as is	US Marshal
007	Front load steam dryer	Laundry Room	HCF	box	US Marshal
008	Samsung Portable boombox	Bedroom A	JS	as is	US Marshal
009	10 Blu Ray DVDs (5 singles 1 set disk)	Family Room	HCF	box	US Marshal
010	Plantronics wireless headset	Office #2	JAD	box	US Marshal
011	Apple IPod with charger	Office #2	JAD	box	US Marshal
012	Receipts, documents and 2 memory cards	Office #2	EWG	box	US Marshal
013	Magellan Nastro 4250 GPS	Bedroom A closet	CH	box	US Marshal
014	Bonded promissory note GE Money \$ 2,000	Office #1 bathroom	AMA	box	US Marshal

EVIDENCE RECOVERY LOG

GENERAL INFORMATION (COPY DATA FROM PAGE ONE)

DATE	CASE ID	LOCATION	PREPARED ASSISTANTS
01/16/2009	2009-01-01-39552	7335 Derby Rd, Derby, NY	JRS JAD
<hr/>			
ITEM #	DESCRIPTION	WHERE FOUND	RECOVERED BY / OBSERVED BY (Last name)
015	File folder labeled "DTC Check Recession, DTC Act; Money, Paycheks" and Office #2	Closet b/w Bedroom A JBS	Paper FBI Evid.
016	Documents, receipts, Best Buy card, Best Buy ^{Office #2} Office #2	Office #2 desk EG	Paper FBI Evid.
017	Kodak camera, carry case and receipts	Office #2 steel file EG	Paper FBI Evid.
018	Diplomatic Ambassador (ID file cabinet) ^{Office #2} Office #2	Office #2 steel file EG	Paper FBI Evid.
019	World Passport # 339281 ^{Office #2} Office #2 steel file cabinet	Office #2 desk EG	Paper FBI Evid.
016-A	Best Buy Credit Card	Office #2 desk EG	Plastic FBI Evid.
<hr/>			
<p style="text-align: center;">→ I.D. IS NOT fake. (It's Real NOT fake)</p>			
<p style="text-align: center;">By: Shane-Christopher: Burroughs FBI/DOJ United States of America (1976) Common Law</p>			

12/17/09
14:34:07
Collected Items for a Case
Case ID: 266S-BF-39552
Collected Item Type: All
Category Type: 1B

ICMIPROS
PAGE 2

Cat/Num Barcode	Office and Storage Location	Type	Acquired/ Charged Out	Charged Out To/ Reason	Contributor/ Description
1B13 E4236051	BF USMS	G	01/16/2009		SHANE BUCZEK 48"STEEL DESK AND FILE CABINET 52" LCD TV MODEL LN52A650A1F SN: AL073CHB01458R TV STAND-GLASS & CHROME YAMAHA HOME THEATRE SYSTEM MODEL: HTR6130, SMT079018WU 6PCS SAMSUNG 7-4 CUBIC FEET GAS DRYER MODEL DV448AGP/XAA S/N: W03H568QA00248X W/PEDESTAL SAMSUNG 4.5 CUBIC FOOT STEAM WASHER MODEL WF448AAP/XAA, S/N: 02REG61C0625598H
1B13				BF Removed	

12/17/09
14:34:07
Collected Items for a Case
File ID: 2668-BF-39552
Collected Item Type: All
Category Type: 1B

ICMIPROS
PAGE 1

Category/Num Barcode	Office and Storage Location	Type	Acquired/ Chrged Out	Charged Out To/ Reason	Contributor/ Description
1B1 E42360319	BF VALU	VS1	DR1	V 01/16/2009	SHANE C. BUCZEK BEST BUY CREDIT CARD #7001062124486055
1B2 E4236032	BF ECR	CAB7	DR1	G 01/16/2009	SHANE CHRISTOPHER BUCZEK RECEIPTS/DOCUMENTATION AND 2 MEMORY CARDS
1B3 E4236033	BF ECR	CAB7	DR1	G 01/16/2009	SHANE CHRISTOPHER BUCZEK DOCUMENTATION/RECEIPTS
1B4 E4236034	BF ECR	CAB7	DR1	G 01/16/2009	SHANE CHRISTOPHER BUCZEK 1 APPLE IPOD MODEL A1205 SN: 5U3392LW5QS
1B5 E4236035	BF ECR	CAB10	SH3	G 01/16/2009	SHANE CHRISTOPHER BUCZEK 1 PLANTRONICS VOYAGER 520 WIRELESS HEADSET W/CHARGER
1B6 E4236036	BF ECR	CAB7	DR1	G 01/16/2009	SHANE CHRISTOPHER BUCZEK (1) BONDED PROMISSORY NOTE- TO GE MONEY FOR \$42,000.00 BY SHANE BUCZEK
1B7 E4236037	BF ECR	CAB7	DR1	G 01/16/2009	SHANE CHRISTOPHER BUCZEK 1.0. FOLDER-DIPLOMATIC AMBASSADOR 10
1B8 E4236038	BF ECR	CAB7	DR1	G 01/16/2009	SHANE CHRISTOPHER BUCZEK WORLD PASSPORT #337286
1B9 E4236039	BF ECR	CAB10	SH3	G 01/16/2009	SHANE CHRISTOPHER BUCZEK MAGELLAN MAESTRO 4250 GPS
1B10 E4236040	BF ECR	CAB13	SH2	G 01/16/2009	SHANE CHRISTOPHER BUCZEK 10 BLU RAY DVD'S: DAY AFTER TOMORROW; PATRIOT; IRONMAN; I AM LEGEND; TERMINATOR 2; ULTIMATE MATRIX COLLECTION 5 DISK SET
1B11 E4236041	BF ECR	CAB13	SH2	G 01/16/2009	SHANE CHRISTOPHER BUCZEK KODAK CAMERA/CARRY CASE/RECEIPTS
1B12 E4236042	BF ECR	CAB7	DR1	G 01/16/2009	SHANE CHRISTOPHER BUCZEK FILE FOLDER LABELED "DTC CHECK RECESSION" WITH FILES LABELED "DTC ACCOUNT", "MONEY", "PAID CHECKS"

** Buffalo New York is outside U. S jurisdiction*

[289 US 146] *Supreme Court has said many times the D.C. courts lack criminal jurisdiction*

↓ "when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state, on board any vessel belonging in whole or in part to the United States" or any of its nationals. And by § 41 of the Judicial Code, U. S. C. title 28, § 102, venue to try offenses "committed upon the high seas or elsewhere out of the jurisdiction of any particular State or district," is "in the district where the offender is found or into which he is first brought." As the offense charged here was committed on board a vessel lying outside the territorial jurisdiction of a state, see *Wynne v. United States*, 217 U. S. 234, 54 L. ed. 748, 30 S. Ct. 447; *United States v. Rodgers*, 150 U. S. 249, 265, 37 L. ed. 1071, 1077, 14 <*pg. 1089> S. Ct. 109, and within that of a foreign sovereignty, the court below was without jurisdiction to try and punish the offense unless it was within the admiralty and maritime jurisdiction of the United States.

Two questions are presented on this appeal, first, whether the extension of the judicial power of the Federal government "to all cases of admiralty and maritime jurisdiction," by Art. 3, § 2 of the Constitution confers on Congress power to define and punish offenses perpetrated by a citizen of the United States on board one of its merchant vessels lying in navigable waters within the territorial limits of another sovereignty; and second, whether Congress has exercised that power by the enactment of § 272 of the Criminal Code under which the indictment was found.

↓ [1] The court below thought, as appellee argues, that as § 8 of Art. 1 of the Constitution specifically granted to Congress the power "to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations," and "to make rules concerning captures on land and water," that provision must be regarded as a limitation on the general provision of § 2 of Art. 3, that the judicial power shall extend "to all cases of admiralty and maritime jurisdiction;" that as the specific

[289 US 147] *Also See Article I Sec. 8. Cl. 17*

grant of power to punish offenses outside the territorial limits of the United States was thus restricted to offenses occurring on the high seas, the more general grant could not be resorted to as extending either the legislative or judicial power over offenses committed on vessels outside the territorial limits of the United States and not on the high seas.

Before the adoption of the Constitution, jurisdiction in admiralty and maritime cases was distributed between the Confederation and the individual states. Article 9 of the Articles of Confederation provided that "the United States, in Congress assembled, shall have the sole and exclusive right and power . . . of establishing rules for deciding in all cases, what captures on land or water shall be legal, . . . appointing courts for the trial of piracies and felonies committed on the

high seas and establishing courts for receiving and determining finally appeals in all cases of captures. . . ." So much of the general admiralty and maritime jurisdiction as was not included in this grant of power remained with the states. The powers thus granted were in substance the same as those later conferred on the national government by Article 1, § 8 of the Federal Constitution. This section was adopted to carry out a resolution of the Convention "that the national legislature ought to possess the legislative rights vested in Congress by the Confederation." Its primary purpose and effect was to transfer to the newly organized government the powers in admiralty matters previously vested in the Confederation.²

[289 US 148]

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3 On June 5, 1787, Wilson stated to the Convention that he thought the admiralty jurisdiction should be given wholly to the national government. Resolution XVI which was referred to the Committee on Detail on July 26th, provided that the jurisdiction of the national judiciary "shall extend to cases arising under laws passed by the general legislature and to such other questions as involve the natural peace and harmony." Wilson was one of the five members of the Committee on Detail, chosen on July 24th, which reported, August 6th, Article XI, dealing with the jurisdiction of federal courts, and containing in § 3 a provision extending the jurisdiction of the Supreme Court "to all cases of admiralty and maritime jurisdiction" which was ultimately incorporated in § 2 of Article 3 of the Constitution, as finally adopted. Madison's Diary, International Edition, pp. 61, 336, 317, 318, 344.

By: Shane-Christophus: Buczak

♦90656-111♦

Shane C Buczak
Executor of the Estate
Federal Correction Institution
P.O. Box 1000
Loretto, PA [15940]
United States of America

NON Domestic Without the U.S.

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